In the Supreme Court of the United States

OCTOBER TERM, 1906.

FRED L. DOBE AND EDWARD F. O'BRIEN, plaintiffs in error, v. THE UNITED STATES. } No. 503.

SECUNDINO MIRANDONA Y MIRANDONA, plaintiff in error, v. THE UNITED STATES. } No. 504.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

FRED L. DORR AND EDWARD F. O'BRIEN, plaintiffs in error, *v.* THE UNITED STATES. } No. 583.

SECUNDINO MENDAZONA Y MENDAZONA, plaintiff in error, *v.* THE UNITED STATES. } No. 584.

MOTION TO ADVANCE.

Comes now the Solicitor-General, on behalf of the United States, and moves the court to advance the above-entitled cases on the docket for hearing during the present term.

It is requested that these cases be heard immediately after the case of *Thomas E. Kepner* v. *The United States*, No. 244, for the following reasons:

First. Because two of the three questions raised in the cases against Dorr and O'Brien and Mendazona are raised in the Kepner case.

Second. Because the issues involve important constitutional questions and affect the entire administration of justice in its criminal branch in the Philippine Islands.

The two issues raised in the case of *The United States* v. *Kepner* are:

(*a*) Does the right of trial by jury exist in the Philippine Islands, notwithstanding the fact that it was not extended to those islands by the Philippine government act of July 1, 1902?

(*b*) Does the provision of the Philippine government act of July 1, 1902, that no person shall twice, for the same offense, be put in jeopardy of punishment, repeal the law of the Philippine Islands which gives the government the right of appeal from judgments of acquittal in criminal cases? In other words, does the procedure in the Philippine Islands, under which the hearing in the court of first instance and the appeal before the Supreme Court are but a part of one continuous trial, violate the act of Congress providing against double jeopardy?

This latter question is the sole issue raised in the Mendazona case. In the Dorr and O'Brien case the jury trial question is raised and, in addition thereto, plaintiffs in error will ask the court to review the case on its merits. The plaintiffs in error were charged with publishing a criminal libel against one of the members of the Philippine Commission, and the sole question raised in the case

was whether or not the publication complained of was libelous under the law.

Thus it is seen that all the issues raised in these cases, with one exception, are contained in the Kepner case, so that a single hearing will practically dispose of the three cases. A mere statement of the issues discloses the fact that practically all the criminal cases now pending and which may hereafter arise in the Philippine Islands will be affected by the decision of the court thereon.

Under the law as it now stands in the Philippine Islands it is the custom in all cases where the accused is able to employ an American lawyer to ask for a jury trial, with a view to laying a foundation for an appeal to the Supreme Court of the United States in the event of conviction. On the other hand, in cases of acquittal the Government is interested in appealing a large number of the cases to the supreme court of the islands. It is thus evident that the government of the Philippine Islands is vitally interested in knowing whether or not it has the right of appeal from judgments of trial courts in criminal cases under the provisions of the act of Congress of July 1, 1902, and in having the question whether the right of trial by jury exists in the Philippine Islands definitely and finally determined by this court. Until this is done the administration of criminal justice in the Philippine Islands is practically suspended.

As the same counsel do not represent the plaintiffs in error in these cases and the Kepner case, I am unable to say whether all would consent to the cases being heard together as one case. Probably this can be done, but so far at least as the Government is concerned the time of one case for the hearing of the three will be sufficient.

Notice of this motion has been served upon counsel for the plaintiffs in error, and it is understood that they concur therein.

HENRY M. HOYT,
Solicitor-General.
LEBBEUS R. WILFLEY,
Attorney-General, Philippine Islands.

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